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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,729	09/30/2003	Marc Gianotti	S63.2Q-13017-US04	3972
490	7590	10/27/2006	EXAMINER	
VIDAS, ARRETT & STEINKRAUS, P.A. 6109 BLUE CIRCLE DRIVE SUITE 2000 MINNETONKA, MN 55343-9185			SNOW, BRUCE EDWARD	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 10/27/2006

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/674,729
Filing Date: September 30, 2003
Appellant(s): GIANOTTI, MARC

MAILED
OCT 27 2006
Group 3700

Jennifer Buss
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/31/06 appealing from the Office action
mailed 5/8/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,709,713	Evans et al	1-1998
5,725,547	Chuter	3-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 31-32, 40, 41, 43-46 are rejected under 35 U.S.C. 102(e) as being anticipated by Evans et al (5,709,713).

Evans et al teaches a self-expanding braided tubular mesh comprising first 14 and second 16 wires helically wound at a first and second pitch, respectively; wherein selected crossing points each of the first and second wires are shaped to form an elevation, wherein the elevations 54 are arranged in a pattern having a third pitch different than the first pitch and different from the second pitch.

Claims 31-32, 40, 41, 43-46 are rejected under 35 U.S.C. 102(e) as being anticipated by Chuter (5,725,547).

Chuter teaches a stent insertable into the body passageway, including:

a flexible self-expanding braided tubular wall comprising at least one first wire 10 helically wound at a first pitch and at least one second wire 10 helically wound at a second pitch different from the first pitch whereby the first and second wires cooperate to form multiple crossing points of the at least one first wire and the at least one second wire;

wherein at selected crossing points, each of the first wire and the second wire is shaped to form an elevation 24 extended away from the braided tubular wall in a selected direction radially of the braided tubular wall; and

wherein said elevations are arranged in at least one elevation pattern on the braided tubular wall, and the at least one elevation pattern has a third pitch different from the first pitch and different from the second pitch.

(10) Response to Argument

Regarding the rejection under 35 U.S.C. 102(e) as being anticipated by Evans, appellant argues that Evans does not teach a wire because the flat ribbon 14 is not a wire. As defined by the Encarta World English Dictionary, a wire is merely a thin flexible strand of metal.

Wire [wīr]

noun (*plural* wires)

Definition:

1. strand of metal: metal in the form of thin flexible strands, or a single strand of it

This does not limit “wire” to a round cross-section; wire can have any cross-section. Appellant further argues that since his specification limits the diameter of the wires to a particular range, he has thus set forth a special definition of wire; the Examiner disagrees. While the specification provides for a preferred size, it does explicitly state “wire” has a new definition.

Evans teaches the interwoven elements 14 can be made of metal such as Nitinol (7:3-6); Evans further teaches said elements can be “*composed of multiple individual filaments* (6:64-66)”. It is the Examiner’s strong position that thin, flexible, and metal elements 14 and 16 are correctly termed “wire”.

Regarding the rejection under 35 U.S.C. 102(e) as being anticipated by Chuter (5,725,547), appellant argues that Chuter fails to teach the first helically wound wire is wound at a first substantially constant pitch and the second helically wound wire is wound at a second substantially constant pitch. As previously stated by the Examiner, the *“Examiner admits that the first and second winding do not have **a constant pitch over the entire length of the stent**. However, the windings on the stent are considered “substantially constant”, note “substantially” is undefined in applicant’s specification. See MPEP 2173.05(b) section D.”*

Appellant failed to correctly restate the Examiner’s position. Appellant has not claimed that the pitch is “constant” but only has to be “substantially constant”. Further, with reference to the claims, it is not stated that the windings are of a substantially constant pitch is over the entire entire length of the stent. With that is mind, one can reasonably state that with reference to the device of Chuter, the wires in a longitudinally oriented section 26 are of a substantially constant pitch in that section.

Finally, referring to figure 1 of Chuter, looking at the entire length, the stent is comprised of sections 26 and 24. Windings 10 in sections 26 have a substantially constant pitch; sections 26 further make up a larger percentage or a “substantial” portion of the stent’s length and, therefore, the winding are “substantially constant” over the entire length of the stent.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

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For the above reasons, it is believed that the rejections should be sustained.

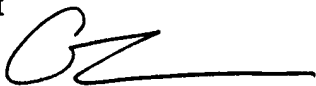
Respectfully submitted,

Bruce Snow

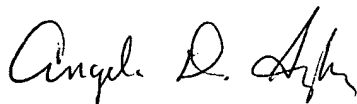

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